

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN L. HOPKINS,

No. C 07-6096 CW (PR)

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND ADDRESSING HIS OTHER
PENDING MOTIONS IN
CONNECTION WITH CASE NO.
C 09-0722 CW (PR)

v.

OAKLAND POLICE DEPARTMENT,
et al.,

Defendants.

(Docket no. 21)

This civil rights action was dismissed without prejudice by the Court on May 16, 2008. The Court concluded that dismissal was required because Plaintiff failed to comply with its March 17, 2008 Order directing him to submit a non-prisoner application for leave to proceed in forma pauperis (IFP).¹ Plaintiff now seeks reconsideration of the dismissal by filing a document entitled "Motion to Vacate Dismissal," which the Court construes as a motion for reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure.

Where the district court's ruling has resulted in a final judgment or order, a motion for reconsideration may be filed under Rule 60(b). Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is

¹ In its March 17, 2008 Order, the Court identified Plaintiff as a non-prisoner, stating: "Plaintiff filed a Notice of Change of Address requesting the Clerk of the Court to forward all documents to 2320 Havens Court, Oakland, California, 94605, which the Court assumes is his home address because Plaintiff does not specify that he was transferred to another institution." (Mar. 17, 2008 Order at 1.)

1 void; (5) the judgment has been satisfied; (6) any other reason
2 justifying relief. Fed. R. Civ. P. 60(b); School Dist. 1J v.
3 ACandS Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

4 Plaintiff contends that he never received the Court's March
5 17, 2008 Order. He claims that he has "always used due diligence
6 informing courts of address changes, [and] status of case before
7 and after the order was issued." (Mot. for Recons. at 1.)
8 However, even if the circumstances presented by this case warrant
9 relief under Rule 60(b), Plaintiff has since filed a new action in
10 this Court. See Hopkins v. Oakland Police Dept., Case no. C 09-
11 0722 CW (PR). Plaintiff raises identical claims against the same
12 Defendants in his new action, and his IFP motion in that action
13 has been granted. Reconsideration of the dismissal of the present
14 action is unnecessary because Plaintiff is pursuing his claims in
15 the new action.

16 Accordingly, Plaintiff's "Motion to Vacate Dismissal" (docket
17 no. 21), which has been construed as a motion for reconsideration,
18 is DENIED as unnecessary.

19 Plaintiff also asks for appointment of counsel and for the
20 Court to issue a preliminary injunction precluding the Oakland
21 Police Department from "further harassment." First, the present
22 case has been dismissed and his motion for reconsideration has
23 been denied; therefore, his requests are moot. However, because
24 Plaintiff is pursuing the same claims in Case no. C 09-0722 CW
25 (PR), the Court will consider these requests in connection with
26 his new action.

27 Plaintiff states, "Judge Claudia Wilken appointed counsel
28 referring [sic] Plaintiff's initial complaint to Pro Bono Project

1 and Plaintiff was appointed Latham & Watkin Law Firm." (Mot. for
2 Recons. at 3.) Plaintiff "requests that the Court consider
3 appointing and refering [sic] case back to Pro Bono Project due to
4 the retaliation of [his] first complaint . . . [and] due to the
5 complexities in bringing this action and continous [sic] wrongs
6 Plaintiff has endured by Oakland Police Department and its
7 officers." (Id.) The record shows that Plaintiff was never
8 appointed counsel in the present case; however, he was appointed
9 counsel in a previous civil rights action, Hopkins v. Oakland
10 Police Dept. Officers, et al., Case no. C 01-4972 CW (PR), which
11 was dismissed with prejudice pursuant to a settlement agreement on
12 March 25, 2006. As mentioned above, Plaintiff is pursuing the
13 same claims as the present case in Case no. C 09-722 CW (PR);
14 however, the Court is unable to assess at this time whether
15 exceptional circumstances exist which would warrant seeking
16 volunteer counsel to accept a pro bono appointment in that case.
17 The proceedings in his new action are at an early stage and it is
18 premature for the Court to determine Plaintiff's likelihood of
19 success on the merits. Moreover, Plaintiff has been able to
20 articulate his claims adequately pro se in light of the complexity
21 of the issues involved. See Agyeman v. Corrections Corp. of
22 America, 390 F.3d 1101, 1103 (9th Cir. 2004). Accordingly,
23 Plaintiff's request for appointment of counsel in Case no. C 09-
24 722 CW (PR) is DENIED at this time. This does not mean, however,
25 that the Court will not consider appointment of counsel at a later
26 juncture in the proceedings in Case no. C 09-722 CW (PR), that is,
27 after Defendants have filed their dispositive motion and the Court
28 has a better understanding of the procedural and substantive

1 matters at issue. Therefore, Plaintiff may file a renewed motion
2 for the appointment of counsel in Case no. C 09-722 CW (PR) after
3 Defendants' dispositive motion has been filed. If the Court
4 decides that appointment of counsel is warranted at that time,
5 then it can seek volunteer counsel to agree to represent Plaintiff
6 pro bono in his new action.

7 Before granting a preliminary injunction in Case no. C 09-722
8 CW (PR), notice to the adverse party is required. Fed. R. Civ. P.
9 65(a)(1). The complaint in Plaintiff's new action has yet to be
10 served. Therefore, Plaintiff's request for a preliminary
11 injunction cannot be decided until the parties to that action are
12 served. See Zepeda v. INS, 753 F.2d 719, 727 (9th Cir. 1983).
13 Accordingly, his request for a preliminary injunction in Case no.
14 C 09-722 CW (PR) is DENIED as premature.

15 The Clerk of the Court is directed to file a copy of this
16 Order in Case no. C 09-0722 CW (PR).

17 This Order terminates Docket no. 21.

18 IT IS SO ORDERED.

19 DATED: September 16, 2009

20 

21 CLAUDIA WILKEN
22 United States District Judge
23
24
25
26
27
28